

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

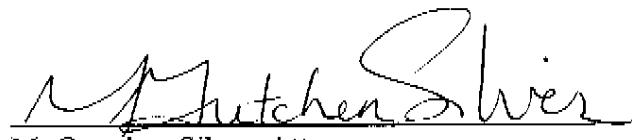
In Re:) Chapter 11 Proceeding
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PATRICK DEL MONICO and) Case No. 04-38235
KIM DEL MONICO,)
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)
Debtor(s).) Hon. A. Benjamin Goldgar

FILED
UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
FEB 11 2005
KENNETH S. GARDNER, CLERK
PS REP. - TCR

**NOTICE OF EMERGENCY MOTION TO MODIFY
FINAL PRETRIAL ORDER**

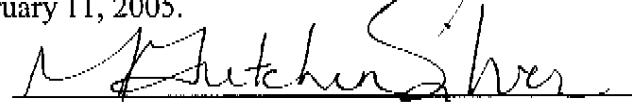
To: See Attached Service List

PLEASE TAKE NOTICE THAT on **Monday, February 14, 2005**, at the hour of **9:30 a.m.**, I shall appear before the Honorable A Benjamin Goldgar, U.S. Bankruptcy Judge, in Courtroom 613, Dirksen Federal Courthouse, 219 South Dearborn Street, Chicago, Illinois or before any other Bankruptcy Judge who may be sitting in his place and shall present an **EMERGENCY MOTION TO MODIFY FINAL PRETRIAL ORDER**, a copy of which is attached hereto and is herewith served upon you.


M. Gretchen Silver, Attorney
Attorney Id. No. 06204419
OFFICE OF THE U.S. TRUSTEE
227 West Monroe Street, Suite 3350
Chicago, Illinois 60606
(312) 353-5054

CERTIFICATE OF SERVICE

I, M. Gretchen Silver, an attorney, state that I caused a copy of the above **NOTICE OF MOTION**, together with a copy of the **EMERGENCY MOTION TO MODIFY FINAL PRETRIAL ORDER**, to be sent to all parties on the attached service list via the manner indicated before the hour of **4:00 p.m.** on **Friday, February 11, 2005**.



**SERVICE LIST
CASE NO. 04-38235**

VIA FAX

John H. Redfield
Kelleher & Buckley, LLC
231 West Main Street
Barrington, IL 60010
Fax No. (847) 382-9135

John Ellsworth
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400 South Braintree Drive
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Neal H. Levin
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VIA 1ST CLASS U.S. MAIL

Patrick Del Monaco and
Kim H. Del Monaco
4510 Red Oak Lane
Long Grove, IL 60047

TRANSACTION REPORT

FEB-11-2005 FRI 10:22 AM

FOR: U. S. TRUSTEE OFFICE 312 886 5794

SEND

DATE	START	RECEIVER	TX TIME	PAGES	TYPE	NOTE	M#	DP
FEB-11	10:22 AM	918473829135	43"	8	FAX TX	OK	166	

TOTAL : 43S PAGES: 8

TRANSACTION REPORT *

FEB-11-2005 FRI 10:25 AM *

FOR: U. S. TRUSTEE OFFICE 312 886 5794 *

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DATE	START	RECEIVER	TX TIME	PAGES	TYPE	NOTE	M#	DP
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TOTAL : 47S PAGES: 8 *

10-5/6/05

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FOR: U.S. TRUSTEE OFFICE

312 886 5794

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DATE	START	RECEIVER	TX TIME	PAGES	TYPE	NOTE	M#	DP
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**EMERGENCY MOTION TO MODIFY
FINAL PRETRIAL ORDER**

NOW COMES IRA BODENSTEIN, the United States Trustee for the Northern District of Illinois (the "U.S. Trustee"), by and through his attorney, M. Gretchen Silver, and for his Emergency Motion to Modify Final Pretrial Order (the "Motion"), states as follows:

1. On February 9, 2005, the Court held a status hearing (the "Hearing") on the Motion of the U.S. Trustee for Appointment of a Chapter 11 Trustee (the "Motion to Appoint a Trustee"). At the Hearing, the Court set the Motion to Appoint a Trustee for an evidentiary hearing on February 22, 2005 at 1:30 pm. Also, at the Hearing, the Court stated that it would issue a Final Pretrial Order (the "Order") governing the hearing on the Motion to Appoint a Trustee. Although a number of matters concerning the Order were discussed, a discovery cut-off was not addressed by the Court and the parties.

2. On February 9, 2005, the Court issued the Order, a copy of which was received by the U.S. Trustee on February 10, 2005. The Order provides that "[d]iscovery is closed, except that the parties may conduct any further discovery they choose by mutual agreement." Counsel for the

U.S. Trustee was not aware that the Court's standard pretrial order contains such a provision.

3. On February 2, 2005, Patrick J. Del Monaco and Kim H. Del Monaco (collectively, the "Debtors") filed their Response to the Motion for Appointment of a Chapter 11 Trustee (the "Response"). The Response alleges, *inter alia*, that the Motion to Appoint a Trustee was the result of advice given to the Debtors by their prior counsel, John Ellsworth. Accordingly, it is necessary to depose Mr. Ellsworth regarding any such advice.

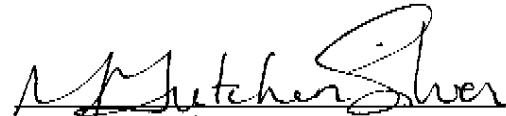
4. On February 10, 2005, counsel for the U.S. Trustee contacted John Redfield, Debtors' counsel, to request Mr. Redfield's agreement to depose Mr. Ellsworth during the week of February 14, 2005. Mr. Redfield refused. Counsel for the U.S. Trustee advised Mr. Redfield that she would be filing this Motion.

5. The U.S. Trustee brings this Motion on an emergency basis given the expedited schedule for trial on the Motion to Appoint a Trustee. It is necessary to have this issue resolved immediately in order to depose Mr. Ellsworth prior to the February 22nd hearing.

6. Accordingly, the U.S. Trustee requests that this Court enter an order: (a) modifying the Final Pretrial Order to allow the U.S. Trustee to depose John Ellsworth; and (b) for such further relief as this Court deems appropriate.

RESPECTFULLY SUBMITTED:
IRA BODENSTEIN
UNITED STATES TRUSTEE

DATED: 2/11/05 BY:


M. Gretchen Silver, Attorney
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